

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 12/9/2014	(3) CONTACT/PHONE Rob Fitzroy, Environmental Resource Specialist / 781-5179	
(4) SUBJECT Hearing to consider a resolution for approval of an Addendum to the Final Environmental Impact Report and for revisions to Conditions of Approval "92," "27.rrr" and "28.rrr" for the Santa Margarita Ranch Agricultural Residential Cluster Subdivision in order to comply with the Peremptory Writ of Mandate issued by the San Luis Obispo County Superior Court in North County Watch, et al. v. County of San Luis Obispo, et al.(Case No. CV098031). District 5.			
(5) RECOMMENDED ACTION It is recommended that the Board: 1. Hold the public hearing to consider the Addendum to the Final Environmental Impact Report and the revised conditions of approval as set forth in the attached Exhibits and staff report. 2. Adopt and instruct the chairman to sign the resolution to revise applicable conditions of approval for the Santa Margarita Ranch Agricultural Residential Cluster Subdivision in order to comply with the Peremptory Writ of Mandate issued by the San Luis Obispo County Superior Court in North County Watch, et al. v. County of San Luis Obispo, et al.(Case No. CV098031).			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>60 min.</u> ) <input type="checkbox"/> Board Business (Time Est. <u>    </u> )			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)  N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A    Date: <u>                </u>	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe			
(18) SUPERVISOR DISTRICT(S) District 5			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Rob Fitzroy, Environmental Resource Specialist

VIA: Ellen Carroll, Planning Manager / Environmental Coordinator

DATE: 12/9/2014

SUBJECT: Hearing to consider a resolution for approval of an Addendum to the Final Environmental Impact Report and for revisions to Conditions of Approval "92," "27.rrr" and "28.rrr" for the Santa Margarita Ranch Agricultural Residential Cluster Subdivision in order to comply with the Peremptory Writ of Mandate issued by the San Luis Obispo County Superior Court in North County Watch, et al. v. County of San Luis Obispo, et al.(Case No. CV098031). District 5.

## **RECOMMENDATION**

It is recommended that the Board:

1. Hold the public hearing to consider the Addendum to the Final Environmental Impact Report and the revised conditions of approval as set forth in the attached Exhibits and staff report.
2. Adopt and instruct the chairman to sign the resolution to revise applicable conditions of approval for the Santa Margarita Ranch Agricultural Residential Cluster Subdivision in order to comply with the Peremptory Writ of Mandate issued by the San Luis Obispo County Superior Court in North County Watch, et al. v. County of San Luis Obispo, et al.(Case No. CV098031).

## **DISCUSSION**

### **Background**

The Santa Margarita Ranch Agricultural Residential Cluster Subdivision Project involves development of 111 clustered home sites and one ranch headquarters unit on the 3,778 acres included in the Agricultural Residential Cluster Subdivision site.

The Final Environmental Impact Report (FEIR) was certified and the project was approved in December 2008 by the San Luis Obispo County Board of Supervisors. In addition, the Board adopted California Environmental Quality Act (CEQA) Findings of Fact for the significant environmental impacts identified for the Project and a Statement of Overriding Considerations for the eleven unavoidable significant environmental impacts identified in the FEIR. Pursuant to Section 21081(a)(3) of the Public Resources Code, as described in the Statement of Overriding Considerations, the Board determined that the project's social, economic, and policy benefits make infeasible the alternatives identified in the 2008 FEIR and the identified unavoidably significant impacts were thereby deemed acceptable because of specific overriding considerations.

### **Superior Court Judgment**

Following certification of the 2008 FEIR and approval of the project, Petitioners North County Watch and the Endangered Habitat League filed suit challenging these actions in the San Luis Obispo Superior Court, *North County Watch, et al. v. County of San Luis Obispo*, Case No. CV098031. The trial court

entered judgment in that action on June 18, 2013, and issued a Peremptory Writ of Mandate commanding the County to undertake certain tasks before tract map recordation, grading permit, or construction permit issuance. The judgment determined that the off-site air quality mitigation fee ultimately imposed on the Project was inadequate, and did not include substantial evidence as to its applicability for use by this specific project.

The specific mitigation measure in the FEIR that addressed off-site air quality mitigation is as follows:

***“AQ-1(f). Off-Site Mitigation.*** *Prior to issuance of grading permits, the applicant shall work with APCD to define and implement off-site emission reduction measures to reduce emissions to below Tier 2 levels. In accordance with APCD methodology, the excess emissions shall be multiplied by the cost effectiveness of mitigation as defined in the State’s current Carl Moyer Incentive Program Guidelines to determine the annual off-site mitigation amount. This amount shall then be extrapolated over the life of the project to determine total off-site mitigation. Off-site emission reduction measures may include, but would not be limited to:*

- *Developing or improving park-and-ride lots;*
- *Retrofitting existing homes in the project area with APCD-approved wood combustion devices;*
- *Retrofitting existing homes in the project area with energy-efficient devices;*
- *Constructing satellite worksites;*
- *Funding a program to buy and scrap older, higher emission passenger and heavy-duty vehicles;*
- *Replacing/re-powering transit buses;*
- *Replacing/re-powering heavy-duty diesel school vehicles (i.e. bus, passenger or maintenance vehicles);*
- *Funding an electric lawn and garden equipment exchange program;*
- *Retrofitting or re-powering heavy-duty construction equipment, or on-road vehicles;*
- *Re-powering marine vessels;*
- *Re-powering or contributing to funding clean diesel locomotive main or auxiliary engines;*
- *Installing bicycle racks on transit buses;*
- *Purchasing particulate filters or oxidation catalysts for local school buses, transit buses or construction fleets;*
- *Installing or contributing to funding alternative fueling infrastructure (i.e. fueling stations for CNG, LPG, conductive and inductive electric vehicle charging, etc.);*
- *Funding expansion of existing transit services;*
- *Funding public transit bus shelters;*
- *Subsidizing vanpool programs;*
- *Subsidizing transportation alternative incentive programs;*
- *Contributing to funding of new bike lanes;*
- *Installing bicycle storage facilities; and*
- *Providing assistance in the implementation of projects that are identified in City or County Bicycle Master Plans.*

***Plan Requirements and Timing.*** *The applicant shall coordinate with APCD and implement off-site emissions reduction measures prior to issuance of grading permits. **Monitoring.** Planning and Building shall verify compliance prior to issuance of grading permits.”*

This mitigation measure was implemented through conditions of approval for the Tract and the accompanying Conditional Use Permit. The conditions of approval that the Court determined to be inappropriate were Condition of Approval number 92 for the Conditional Use Permit and Conditions of Approval “27.rrrr” and “28.rrrr” for Tract 2586 (note these conditions are identical). These conditions of approval stated that the off-site fee “shall be similar to and not exceed the South County Air Quality Mitigation Fee.” At the time, the fee was \$204.00 per unit, which would have totaled \$22,848.00 for the project. The condition of approval specifically stated:

*Prior to any development on the site, the applicant shall work with APCD to define a fee, due at issuance of individual building permits, to assist in the implementation of off-site emission reduction measures. The fee shall be similar to and not exceed the South County Air Quality Mitigation Fee. Off-site emission reduction measures may include, but would not be limited to:*

- *Developing or improving park-and-ride lots;*
- *Retrofitting existing homes in the project area with APCD-approved wood combustion devices;*
- *Retrofitting existing homes in the project area with energy-efficient device;*
- *Constructing satellite worksites;*
- *Funding a program to buy and scrap older, higher emission passenger and heavy-duty vehicles;*
- *Replacing/re-powering transit buses;*
- *Replacing/re-powering heavy-duty diesel school vehicles (i.e. bus, passenger or maintenance vehicles);*
- *Funding an electric lawn and garden equipment exchange program;*
- *Retrofitting or re-powering heavy-duty construction equipment, or on-road vehicles;*
- *Re-powering marine vessels;*
- *Re-powering or contributing to funding clean diesel locomotive main or auxiliary engines;*
- *Installing bicycle racks on transit buses;*
- *Purchasing particulate filters or oxidation catalysts for local school buses, transit buses or construction fleets;*
- *Installing or contributing to funding alternative fueling infrastructure (i.e. fueling stations for CNG, LPG, conductive and inductive electric vehicle charging, etc.);*
- *Funding expansion of existing transit services;*
- *Funding public transit bus shelters;*
- *Subsidizing vanpool programs;*
- *Subsidizing transportation alternative incentive programs;*
- *Contributing to funding of new bike lanes;*
- *Installing bicycle storage facilities; and*
- *Providing assistance in the implementation of projects that are identified in City or County Bicycle Master Plans.*

#### Writ of Mandate and County Response

The Writ of Mandate issued by the Court requires the County, in relevant part, to “develop a record based upon substantial evidence supporting establishment of off-site air quality impact fee to mitigate the Project’s significant air quality impacts in compliance with CEQA,” and to “recirculate the off-site air quality impact fee and the analysis of said fee and hold any hearings as may be required by law”. In response to the Writ of Mandate, the County prepared an Addendum to the FEIR (Attachment 2). The Addendum was circulated for a 30-day public review period, beginning July 31, 2014 and concluding September 1, 2014. Four comments were received and responded to in the Final Addendum.

The Addendum extensively analyzed and documented additional evidence regarding the establishment of off-site mitigation fees for project impacts related to ozone precursor emissions. The Addendum demonstrated that the most appropriate method to determining the off-site mitigation fee was use of the Carl Moyer Memorial Air Quality Standards Attainment Program (a program used by the Air Pollution Control District). The emissions of the project were calculated using the most up-to-date model. The calculated emissions were then compared to the most recent air quality thresholds established by the Air Pollution Control District. The emissions in excess of the thresholds were then multiplied by the fee established by the Carl Moyer program. The fee established by the program is \$17,720.00 per ton in excess of the established threshold. It was estimated that the total off-site mitigation fee for the project would be \$162,280.00 if the project were operational by the year 2016, as shown in Addendum (Attachment 2). If the project is operational later than the year 2016, the fee will be adjusted accordingly.

based on the methodology described in the Addendum. Fee adjustments account for energy efficiency improvements over time and any changes in the Carl Moyer fee. The Addendum shows the applicable fee for every year through the year 2035.

#### Revisions to Conditions of Approval

To comply with the Writ of Mandate, Condition of Approval number 92 for the Conditional Use Permit and Conditions of Approval "27.rrr" and "28.rrr" must be modified to reflect the newly calculated fee. Again, it should be noted that these conditions of approval for Tract 2586 and for the Conditional Use Permit are identical. Therefore, the proposed revisions below would apply to both these conditions. No other changes to any of the conditions of approval would occur. All other approved conditions of approval would remain in effect, including Tract Map condition 35 and Conditional Use Permit condition 135 pertaining to defense and indemnity of the County. Strikethrough represents language to be eliminated and bold and underlined language is the revised language.

~~Prior to final map recordation for a given phase, any development on the site, the applicant shall work with APCD to define a fee, due at issuance of individual building permits, to assist in the implementation of off-site emission reduction measures. The fee shall be similar to and not exceed the South County Air Quality Mitigation Fee pay to the APCD the off-site mitigation fee in accordance with the methodologies and fee schedule contained in November 2014 Addendum to the FEIR. The applicable fee shall be determined based on the year in which the final map is recorded for a given phase. The fee shall be paid proportionate to each phase of the project and the number of homes constructed with a given phase (e.g. Phase I includes 36% of the total number of homes, and as such the fee for Phase I shall be 36% of the total fee for the year in which the final map would be recorded).~~ Off-site emission reduction measures may include, but would not be limited to:

- Developing or improving park-and-ride lots;
- Retrofitting existing homes in the project area with APCD-approved wood combustion devices;
- Retrofitting existing homes in the project area with energy-efficient device;
- Constructing satellite worksites;
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- Subsidizing vanpool programs;
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- Installing bicycle storage facilities; and
- Providing assistance in the implementation of projects that are identified in City or County Bicycle Master Plans.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

The Air Pollution Control District was consulted during preparation of the Addendum. Planning Department staff has worked closely with County Counsel to ensure that the requirements of the judgment have been satisfied. County Counsel reviewed and approved the resolution as to form and content.

#### **FINANCIAL CONSIDERATIONS**

The off-site mitigation fee would be paid by the applicant. No financial costs would be incurred by the County.

#### **RESULTS**

Approval of the recommended action would result in compliance with the Writ of Mandate issued by the San Luis Obispo County Superior Court in North County Watch, et al. v. County of San Luis Obispo, et al. (Case No. CV098031). This action would be consistent with the countywide goals of providing livable and well governed communities.

#### **ATTACHMENTS**

1. Board of Supervisors Resolution with findings and conditions
2. Addendum to the Final EIR for the Santa Margarita Ranch Agricultural Residential Cluster Subdivision, November 2014
3. Final EIR Santa Margarita Ranch Agricultural Residential Cluster Subdivision (Clerk File)